IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
SUMMONS FOR JUDGMENT NO.12 OF 2005
IN
SUMMARY SUIT NO.3534 OF 2004

Pramod C. Patel ...Plaintiff.

V/s.

M/s. Lalit Constructions & Ors. ...Defendants.

Mr.Kirit Hakani for the Plaintiff.
Mr.Sunil Jaykar for the Defendants.

CORAM: S.U.KAMDAR,J.
DATE : 11th October, 2005.
P.C.:

1. Present Suit is filed for the recovery of Rs.15,20,780/-, principal amount being Rs.10,46,500/- with interest claim of Rs.4,74,280 thereon. Present suit is in respect of dishonoured cheque. It is the case of the Defendant that the cheque has been given under the cover of letter being Exhibit A-1 to the Plaint. The said letter interalia states that the delivery of all moulds to be completed in all respects within 15 days of payment. It is his case that no such moulds are handed over and therefore, the Defendants are not liable to repay the said amount. The learned counsel for the Plaintiff, however, produced Delivery Challans dated 4th January, 2002 indicating delivery of the said moulds to the Defendants. The learned counsel for the Defendant, however, contends that said

Delivery Challan is fabricated. He has relied upon averments made in Affidavit in reply in support thereof which interalia states as under:

> "m) That on the receipt of service of summons of the proceedings in the said Criminal Complaint the 1st defendants called upon the plaintiff's Advocate to grant the inspection of the documents relied upon by the plaintiff in the said complaint & upon the said inspection found out that the plaintiff had again misused one more such signed blank letter head of the 1st defendants under the signature of the 1st defendant's constituted attorney/business associate Shri Ashok V. Munot being the 5th defendant herein, by meticulously cutting the printed material of the top portion of the letter head of the 1st defendant's & fabricating therein the contents in the handwriting of some person as if to show that the 1st defendants had been delivered the goods/materials as enlisted therein as per the 1st defendant's order dated 16/2/2001. The plaintiff has annexed as Exhibit 'C' the typed copy of the said alleged hand written writing allegedly dated 4th of January, 2002. I say that the photo copy thereof was given by the plaintiff's Advocate by

Shri P.G.Vora to the Ld. Advocate for the 1st defendant at the time of the Inspection, which I crave leave to refer to & rely upon in support of this reply".

2. Contentions raised in the aforesaid paragraph, in my opinion, are baseless and without any merit. Signature on the Delivery Challan is not disputed. Only contention is that the letter head has been used by cutting name of the company and therefore, the same is fabricated cannot be believed because by cutting of the letter head, there can be no gain to the Plaintiff. On the contrary, retaining the name of the company would give mere credibility to the document if it is forged. In my view therefore, story of fabricated delivery challan is totally moonshine.In that view of the matter, defence is thoroughly bogus and frivolous. However, with a view to give a chance to the Defendants to defend the suit, Defendants are directed to deposit a sum of Rs.15,00,000/- within a period of four weeks, failing which Plaintiff will be entitled to decree. The amount if so deposited, the Prothonotary and Senior Master is directed to deposit the same in a fixed deposit with any nationalised bank initially for a period of one year and renew the same from time to time till further orders from this Court.

3. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from the date of deposit. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.

(S.U.KAMDAR,J.)